

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-16962-DFM
)	
CHARLES ROBERT PATTON, JR.,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 200428,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Charles Robert Patton, Jr. (Respondent) was charged with four counts of misconduct stemming from one client matter. He failed to participate, either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on February 10, 1999, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 15, 2013, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, to his membership records address.³ The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt was not returned to the State Bar.

Thereafter, the State Bar (1) sent a letter by first-class mail to Respondent at his membership records address, with a courtesy copy of the NDC and notice of the State Bar's intention to file a motion for entry of default if a response to the NDC was not received by May 22, 2013; (2) sent an email to Respondent at his membership records email address;⁴ and (3) attempted to reach Respondent at his membership records telephone number and left a message which asked Respondent to return the call.

Respondent failed to file a response to the NDC. On May 23, 2013, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt

³ The NDC identifies Respondent as "Charles Patton." Pursuant to Evidence Code, section 452, subdivision (h), the court takes judicial notice of Respondent's membership records showing that Respondent's full name is "Charles Robert Patton, Jr." The court finds that the lack of clarity in the NDC is de minimis, and that Respondent had sufficient due process. The court notes that the NDC sets forth the membership number of Charles Robert Patton, Jr., and the NDC was served on Charles Robert Patton, Jr.

⁴ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

requested, to his membership records address.⁵ The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment.

Respondent did not file a response to the motion, and his default was entered on June 12, 2013. The order entering the default was properly served on Respondent at his membership records address by first-class mail and by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time. The return receipt was returned to the State Bar Court, but the signature was not legible.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On December 18, 2013, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent has not contacted the State Bar since June 12, 2013, when his default was entered and the order entering default was served; (2) there are other investigations or disciplinary charges pending against Respondent; (3) Respondent has no record of prior discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on January 16, 2014.

⁵ The petition for disbarment attached a copy of the return receipt for the motion for entry of Respondent's default showing that the motion was delivered on "5/24," and the signature of "Mitzy Arias."

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

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Count One - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to collect financial records, failing to respond to telephone messages, and failing to file a bankruptcy petition for his client.

Count Two - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return the \$800 in unearned advanced fees paid by his client.

Count Three - Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render appropriate accounts) by failing to provide any accounting for the \$800 advanced fees paid by his client.

Count Four - Respondent willfully violated section 6068, subdivision (i) of the Business and Professions Code (failure to cooperate) by failing to provide a written response to the State Bar investigator's letters and email regarding his client's complaint and by not otherwise cooperating with the State Bar in its investigation.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been

satisfied and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his default, since the State Bar (a) properly served the NDC on Respondent at his membership records address, (b) sent a letter, with a courtesy copy of the NDC, by first-class mail to Respondent's membership records address; (c) sent an email to Respondent's membership records email address; and (d) attempted to reach Respondent by calling him at his membership records telephone number and asking Respondent to return the call;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC, deemed admitted by the entry of the default, support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent **Charles Robert Patton, Jr.**, State Bar number 200428, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court recommends that Respondent be ordered to make restitution to Marshall McQueen in the amount of \$800, plus 10 percent interest per year from February 9, 2011. Any

restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Charles Robert Patton, Jr.**, State Bar number 200428, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: February ____, 2014

DONALD F. MILES
Judge of the State Bar Court